



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

July 12, 1996

The Honorable Irma Rangel  
Chair  
Committee on Higher Education  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 96-069

Re: Whether a junior college or community college district may use the procedure established by subchapter C, chapter 2, title I, Election Code, when a candidate for its board of trustees is unopposed for election (ID# 38322)

Dear Representative Rangel:

You ask whether the procedure prescribed in new Election Code provisions for the election of unopposed candidates applies to the election of trustees of junior college districts. For the reasons discussed below, we believe that this procedure does not apply to elections of trustees of junior colleges that are not affiliated with independent school districts but does apply in the case of junior colleges that are under the jurisdiction of independent school districts.

The Seventy-fourth Legislature adopted S.B. 680, "relating to the cancellation of and to the filing of a declaration of write-in candidacy in certain elections." Act of May 27, 1995, 74th Leg., R.S., ch. 667, 1995 Tex. Sess. Law Serv. 3639. Senate Bill 680 added a new subchapter C to chapter 2 of the Election Code, which allows certain unopposed candidates to be elected even without the formality of holding an election. Elec. Code §§ 2.051 - .054. Section 2.051 limits the application of the subchapter to "an election for officers of a political subdivision other than a county in which write-in votes may be counted only for names appearing on a list of write-in candidates . . . ." This reference to an election in which write-in votes may be counted only for names appearing on a list of write-in candidates refers to subchapter B, chapter 146, Election Code.

Section 146.021 of the Election Code limits the application of subchapter B to elections of candidates for offices that are to be voted on at the general election for state and county officers. *Id.* § 146.021; *see also id.* § 1.005(7) (definition of "general election for state and county officers"). Subchapter B also provides that a vote for a write-in candidate may not be counted unless the write-in candidate declared his or her candidacy before the election and the candidate's name was placed on a list of certified write-in candidates. *Id.* §§ 146.022, .023.

Now, to determine whether these provisions apply to junior college districts, we examine the Education Code provisions that deal with those districts. Junior college

districts are of two kinds: those that are within the jurisdiction of independent school districts and those that are not. Educ. Code §§ 130.081 (establishment of independent school district or city school district junior college), .031 (establishment of union, county, or joint-county junior college), .082 (governing board of junior college of other than independent school district).

We first examine those junior college districts that are not under the jurisdiction of independent school districts. Section 130.082 of the Education Code governs the election of the governing boards of such junior college districts. *See also id.* § 130.081 (junior college of independent school district). While subsection 130.082(f) of the Education Code requires that the trustees be elected on the first Saturday in April in each even-numbered year, subsection (j) requires that such elections occur on uniform election dates. Educ. Code § 130.082(j); *see also* Elec. Code §§ 1.002(b) (Election Code supersedes conflicting statute), 41.005 (governing body of political subdivision other than county shall set general elections on uniform election dates). Subsection (j) was enacted later than subsection (f), and, in the case of conflict, the latter-enacted provision controls. Gov't Code § 311.025(a). *Compare* Act of June 2, 1969, 61st Leg., R.S., ch. 889, § 1, 1969 Tex. Gen. Laws 2735, 3006 (original enactment of subsection (f)) *with* Act of April 23, 1987, 70th Leg., R.S., ch. 54, § 25(j), 1987 Tex. Gen. Laws 131, 146 (adding subsection (j)). Thus, the law requires that elections of trustees of junior colleges that are not under the auspices of independent school districts be held on uniform election dates.

The "first Tuesday after the first Monday in November in even numbered years" is the date set for the general election for state and county officers, and that date is also a uniform election date. Elec. Code §§ 41.001(a)(4), 41.002. Election Code section 41.003, however, prohibits elections other than those listed to be held on that date. Election of junior college trustees is not one of the enumerated, authorized elections. *Id.* § 41.003.

Subchapter B, chapter 146 of the Election Code does not apply to elections of junior college trustees not affiliated with independent school districts because, as noted above, those individuals are not elected at the general election for state and county officers. *See* Elec. Code §§ 41.002 (setting date for general election for state and county officers), .003 (limiting kinds of elections that may be held on general election for state and county officers). Accordingly, the procedure outlined in S.B. 680 does not apply to elections of junior college trustees not affiliated with independent school districts.

Trustees of junior colleges affiliated with independent school districts are not elected at the general election for state and county officers either. Nevertheless, section 11.056(c) of the Education Code expressly applies the provisions of subchapter B, chapter 146, Election Code, to such districts. *See also* Educ. Code § 130.081. Thus, the special unopposed candidate provisions found in Election Code chapter 2, subchapter C, as added by Senate Bill 680, apply to the election of trustees of junior college districts affiliated with independent school districts.

**S U M M A R Y**

The new Election Code procedures for the election of unopposed candidates without holding an election, found in chapter 2, subchapter C, do not apply to the election of a candidate for trustee of a junior college district that is not affiliated with an independent school district. On the other hand, chapter 2, subchapter C applies to a candidate for trustee of a junior college district that is affiliated with an independent school district.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kimberly K. Oltrogge", written in a cursive style.

Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee